

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Don-Survi Chisolm,	)	Civil Action No.: 4:17-cv-02934-RBH
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Warden, Perry Correctional Institution,	)	
	)	
Respondent.	)	
	)	

Petitioner Don-Survi Chisolm, a state prisoner proceeding pro se, initiated this action by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* ECF No. 1. Respondent answered and filed a motion for summary judgment. *See* ECF Nos. 17 & 18. The Magistrate Judge issued an order directing Petitioner to respond to the motion, *see* ECF No. 19, but Petitioner failed to file a response in opposition. The matter is now before the Court for review of the Report and Recommendation (“R & R”) of United States Magistrate Judge Thomas E. Rogers, III, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.). *See* ECF No. 23. The Magistrate Judge recommends that the Court dismiss Petitioner’s § 2254 petition with prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b), or alternatively, grant Respondent’s motion for summary judgment and dismiss Petitioner’s habeas petition without an evidentiary hearing. *Id.* at p. 14.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo determination of those portions of the R & R to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Neither party has filed objections to the R & R, and the time for doing so has expired.<sup>1</sup> In the absence of objections to the R & R, the Court is not required to give any explanation for adopting the Magistrate Judge's recommendations. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). The Court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation'" (quoting Fed. R. Civ. P. 72 advisory committee's note)).

#### **Certificate of Appealability**

"The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) of the Rules Governing Section 2254 Cases. A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a petitioner satisfies this standard by demonstrating that reasonable jurists would find that the court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336–38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate *both* that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484–85. In

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<sup>1</sup> Respondent's objections were due by March 21, 2018, and Petitioner's objections were due by March 26, 2018. *See* ECF Nos. 23 & 24.

this case, the Court concludes that Petitioner has failed to make the requisite showing of “the denial of a constitutional right.”

After a thorough review of the record in this case, the Court finds no clear error. Accordingly, the Court **ADOPTS** the Magistrate Judge’s R & R [ECF No. 23], **GRANTS** Respondent’s motion for summary judgment [ECF No. 18], and **DENIES AND DISMISSES** Petitioner’s § 2254 petition *with prejudice*. The Court **DENIES** a certificate of appealability because Petitioner has not made “a substantial showing of the denial of a constitutional right” under 28 U.S.C. § 2253(c)(2).<sup>2</sup>

**IT IS SO ORDERED.**

Florence, South Carolina  
April 17, 2018

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge

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<sup>2</sup> The Court also agrees with the Magistrate Judge’s alternative recommendation that this action should be dismissed with prejudice for failure to prosecute pursuant to Rule 41(b). *See* R & R at pp. 1–2, 14.